

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

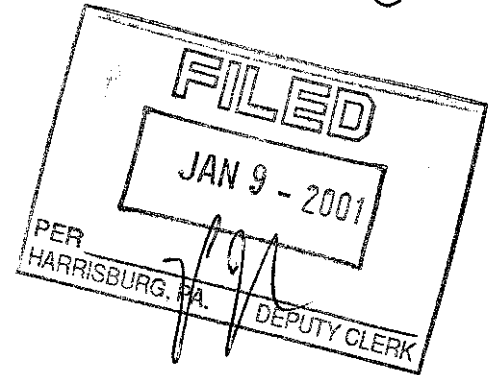
JOHN RICHARD JAE
Plaintiff

vs

DR. ROBERT CLARK,
MARTIN L. DRAGONICH,
JOHN A. FALAKAURICH,
ROBERT N. NOVATNEY,
MICHAEL J. KARP, and
JOHN ANDRADE,
Defendants.

ORIGINAL

CIVIL No. 1:00-CV-1090
U.S. District Judge R. M.
Magistrate Judge Smyser



BRIEF IN SUPPORT OF MOTION REQUESTING COURT APPOINTMENT
MENTAL HEALTH EXPERT, INTER ALIA MOTION FOR STAY

I. STATEMENT OF THE CASE

The Plaintiff John Richard Jae, a Pennsylvania State Prisoner pro se commenced this 42 U.S.C. § 1983 Civil Rights Action by filing a complaint in this Court on June 5, 2000 against Defendant Dr. Clark, Chief Psychiatrist at the State Correctional Institution Camp Hill ("SCI-Camp Hill") Camp Hill, Pennsylvania, along with an Affidavit to Proceed In Forma Pauperis.

On June 21, 2000, this Court granted Plaintiff leave to proceed in forma pauperis, herein this case.

On August 3, 2000, Plaintiff John Richard Jae filed his Amended Complaint in this case adding Martin L. Dragonich, Superintendent, SCI-Camp Hill, Falakaurich, Deputy Superintendent for Centralized Services, SCI-Camp Hill, Robert N. Novatney, Deputy Superintendent for Facilities Management, SCI-Camp Hill, Michael J. Karp, and Charles F. H. Manager, SCI-Camp Hill and John Andrade, Hearing Examiner, SCI-Camp Hill, as Defendants in this Civil Rights Action. On September 8, 2000, Defendants Dragonich, Falakaurich, Novatney, Karp, and Andrade filed their Motion to Revoke Plaintiff's In Forma Pauperis Status and to Defeat a Responsive Pleading to Plaintiff's Amended Complaint and Brief and Affidavit in support, herein this case.

On October 6, 2000, U.S. Magistrate Judge E. Andrew Smyser of this Court held that corrections Defendants had constructively challenged the Plaintiff's access to the courts and that the Plaintiff's motion for summary judgment was granted.

of Imminent danger and issued the following order:

AND NOW, this 6th day of October 2000, IT IS HEREBY ORDERED that within fifteen days of the date of this order, Defendants Dragovich, Palatovich, Novichkov, Kozar and Andrade shall file any relevant evidence they wish concerning the issue of imminent danger and a supplemental brief in support of their motion. Within fifteen days after the filing of the brief and evidence by Defendants Dragovich, Palatovich, Novichkov, Kozar and Andrade, the Plaintiff shall file any relevant evidence he wishes concerning the issue of imminent danger and a brief in opposition to the motion to revoke Plaintiff's Informa Furoris status. 2/

On October 23, 2000, Corrections Defendants filed their Supplemental Brief in Support of Motion to Revoke Plaintiff's Informa Furoris Status And to Deferring of Responsive Pleading to Plaintiff's Amended Complaint Appendix and Supplemental Appendix B Corrections Defendants seek to Revoke Plaintiff's Informa Furoris Status And to Deferring of Responsive Pleading to Plaintiff's Amended Complaint herein this case.

On October 30, 2000, Plaintiff filed a Motion For Enlargement of Time herein, thus far that this Court grant him until December 13, 2000 in which to file his relevant evidence and a brief in opposition to Corrections Defendants' Motion to Revoke Plaintiff's Informa Furoris Status And to Deferring of Responsive Pleading to Plaintiff's Amended Complaint herein this case. Court granted on November 27, 2000, allowing the Plaintiff until December 15, 2000 in which to file his brief in opposition and relevant evidence, herein, stating no further extensions of time will be granted.

On or about December 11, 2000, Plaintiff filed his Plaintiff's Second Motion For Enlargement of Time Inter Alia Motion For Anticipation to the Court's order of November 27, 2000 herein requesting that this Court grant him until March 22, 2001 in which to file his relevant evidence and brief in opposition to Corrections Defendants' Motion to Revoke Plaintiff's Informa Furoris Status And to Deferring of Responsive Pleading to Plaintiff's Amended Complaint. Plaintiff further requesting that this Court grant him an exception to this Court's November 27, 2000 order that no further extensions of time will be granted, which this Court granted on December 13, 2000.

The Plaintiff is now filing his Motion Requesting Court Appointment of Mental Health Expert herein this case. This is his brief in support of such Motion.

II. STATEMENT OF THE FACTS

Plaintiff brings this suit against Defendant Dr. Robert Clark, the Chief Psychiatrist at "Camp Hill" alleging facts that the Plaintiff has a long and lengthy significant history of serious mental health illness disease that the Plaintiff had been on anti-psychotic medications since 1969, when

was only a yrs. old up until January 12, 1999, when Defendant Dr. Clark took off all such, with the exception of a period of time from April 1987 - May 1987, he was on no psych. med. so that on April 24, 2000, without first really examining, seeing & talking to this plaintiff to verify and determine that it was absolutely necessary to do such to this plaintiff, Defendant Dr. Clark ordered plaintiff placed in steel handcuffs, a black box and a steel waist chain with a padlock in his cell in the RHU at SCI-Camp Hill and left this plaintiff in such black box, handcuffs and a steel waist chain with a padlock from April 24 - April 27, 2000, without ordered such removal from this plaintiff, that such was done for punitive purposes to punish this plaintiff for his behavior & that such was not least restrictive measure which could have been used & amounted to inhumane treatment; that as a direct result of being placed & left in steel handcuffs, a black box, a steel waist chain with a padlock by Defendant Dr. Clark from April 24 - April 27, 2000, Plaintiff Jare was unable to eat nor had to stick his mouth down his food and drink and eat/drink like a dog, which was humiliating, but was really difficult to do, was unable to sleep, had extreme difficulty urinating and did not move his bowels at all because he could not wipe himself and most times would be peeing all over himself when he did urinate, which was only humiliating, but was extremely uncomfortable as he had to remain in wet, undershorts and that he suffered extreme unnecessary mental & physical pain, and torture to his hands, wrists, arms & shoulders and permanent injury by way of scars both his wrists from the steel handcuffs and he will be scarred marked from such and that he had no feeling in his left hand, from right below wrist to the base of his left thumb & such feels dead, that, previously in April 2000, Plaintiff Jare tried to kill himself by swallowing nine (9) open metal pills and began to cough up blood and had to be taken out to the emergency room at Holy Spirit Hospital in Camp Hill, PA.; that he did this because he could not live anymore in prison then and because he was hearing voices in his head which told him to kill himself; that on April 24, 2000, a few hours to him being placed in steel handcuffs, a black box, a steel waist chain, a padlock by Defendant Dr. Clark, Plaintiff Jare attempted to kill himself by trying to split his head open by banging it on the cell wall.

because the voices in his head told him to do so, that despite Plaintiff Jare's attempts to take his life on April 23, 24, 25, and despite a prior mental health illness relapse back on February 5 and February 6, 2000, where Plaintiff Jare rubbed feces all over his face hair, arms, hands, chest & legs & on his cell wall & told Prison Staff that he was Jesus Christ and that little green men were running on his cell and trying to run up his ass & where he was banging his head off of his cell wall then too, Defendant Dr. Clark deliberately & wantonly refuses to put Plaintiff Jare back on psychiatric medication and, deliberately & wantonly refuses to have Plaintiff Jare committed to a psychiatric facility on a mental health commitment and wantonly and deliberately refuses to treat Plaintiff Jare for his mental health illness at all, that Plaintiff Jare believes that the next time he tries to kill himself he will succeed so far certain, as he is sick of living, and that Plaintiff Jare wants to get help and treatment for his mental health illness & has requested such from Defendant Dr. Clark and other Prison Staff here, but has been denied such help & treatment by Defendant Dr. Clark & Prison Staff.

In his Amended Complaint again at SB Corrections Defendants Dragovich, Palakovich, Novotney, Kozar & Andrade, Plaintiff Jare alleges that he has been in the RHU at SCI-Camp Hill under disciplinary custody status/punitive segregation since November 19, 1999, that his mental illness causes him to act out & misbehave, that in February, April, May & June, 2000, Defendant Andrade found Plaintiff guilty of various misconducts & sanctioned him to disciplinary custody status time even though such misconducts were a result of Plaintiff's serious mental health illness disease & that Defendants Dragovich, Novotney & Kozar upheld such on Plaintiff's appeals to the point such that Defendants Dragovich, Palakovich, Novotney & Kozar despite them being aware that Plaintiff suffers from serious mental health illness

disease have left plaintiff confined in the RHU on disciplinary custody status that, the officers in the RHU teased & aggravated him, that on June 6, 2000, plaintiff was sent to the Special Assessment Unit (SAU) at SCI-Waymart for mental evaluation, he was returned back to SCI-Camp Hill on July 18, 2000 that, the Report from Waymart SAU recommends that plaintiff be placed in a prison Special Management Unit and that, such placement in the SMU would be unlawful given his significant history of serious mental illness disease.

On October 24, 2000, Plaintiff was transferred to & placed in the SMU, at SCI-Greene, Waynesburg, Pennsylvania.

III. ARGUMENT

Question Presented.

SHOULD THIS COURT APPOINT A MENTAL HEALTH EXPERT IN THIS CASE TO EXAMINE THE PLAINTIFF AND FILE A REPORT AND MAKE A RECOMMENDATION TO THIS COURT?

[Suggested Answer: Yes]

Plaintiff John Richard Greaves & submits, that, here in an incarceration Defendants constructively have challenged Plaintiff's allegation that he was under imminent danger of serious physical injury herein this case & that primary argument appears to be Plaintiff's suicide attempts were not real, that, such were not more than attempts to manipulate the staff of SCI-Camp Hill achieve Plaintiff's goals and agendas, which they characterize as being avoid accepting responsibility for his behavior and to avoid placement in the Special Management Unit, that plaintiff was evaluated by mental health professionals with regular and extensive experience in dealing with inmates and that consistently the reports done on plaintiff were not real.

Instead, find Plaintiff is stable, with no active mental health concern and that, therefore, Plaintiff was not under imminent danger of serious physical injury and his in forma pauperis status should be revoked.

Corrections Defendants' claims & arguments appear to rest primarily upon the Report done on the Plaintiff by the SCI-Waymart SAV Psychiatrist and Treatment Team.

On the other hand, the Plaintiff claims & argues, that he was under imminent danger of serious physical injury at the time of the incidents alleged in his initial complaint, herein, that the evidence which Corrections Defendants have submitted herein in this case relates to whether Plaintiff was or was not under imminent danger of serious physical injury at the time/date(s) of the incidents alleged in his complaint, herein, that Corrections Defendants have failed to introduce any proof whatsoever at all that the SCI-Camp and SCI-Waymart SAV Staff are in fact trained mental health professionals and he has challenged the [redacted] and also challenged the authenticity of the reports and records which Corrections Defendants have introduced as their evidence in this case, and he has contended that the SCI-Waymart SAV Psychiatrist/Team's Report and Recommendation was prematurely made without the benefit of the Results of the E.E.G. and M.R.I. Brain Tests which the SCI-Waymart SAV Psychiatrists had ordered done on Plaintiff, that Plaintiff showed that he has previously been diagnosed with a head injury and that his misconduct and out behavior & his sexual acting out behavior both occur as a result of his serious mental health illness/disease, that he was under imminent danger of serious physical injury at the time of the incidents alleged in his initial complaint herein because he "was" suicidal, and thus his in forma pauperis status should not be

These two opposing views herein this case are drastic opposite & each view presents material facts which are hotly & significantly disputed by the opposing view, thus such are conflict.

Plaintiff has filed a motion requesting an order of court that the be allow to review & copy his Prison Psychiatric/Mental Health Records in order to obtain and submit relevant evidence supporting his position that he suffers from a significant history of serious mental health illness & that he was suicidal on April 23 & 24, 2000 and that he was under imminent danger of serious physical injury on the date of the incident alleged in his initial complaint and to enable him to counter Defendant's claims & arguments, herein this case. Rather than do as the law requires and issue such order allowing the Plaintiff to review & copy his Psychiatric/Mental Health Records, the U.S. Magistrate and District Judge herein this case used an assumed Local Rule of Court to illegally deny such records to the Plaintiff, thereby denying him his U.S. Constitutional Fourteenth Amendment Rights to due process of law. Neither the U.S. Magistrate nor the U.S. District Judge herein this case are trained licensed psychologists, psychiatrists and are "not" legally qualified to make a psychiatric determination based upon and given the above & foregoing facts & arguments herein, it is incumbent upon this Court to appoint a mental health expert (psychologist or psychiatrist) to examine the Plaintiff & then submit a Report and Recommendation to the Court (a copy of which shall be provided the Plaintiff and to Counsel for the Defendants) to aid this Court in making a mental health determination and whether this Plaintiff was or was not under imminent danger of serious physical injury at the time of the incident(s) alleged in the Plaintiff's initial complaint herein prior to this Court determining Corrections Defendants Motion to Revoke Plaintiff's In Forma Pauperes status and to Defendant's Motion to Dismiss Plaintiff's Complaint. Filing a Formal Complaint with the United States District Court for the District of Columbia is not a

Filing of Responsive Pleading to Plaintiff's Amended Complaint in this case and should stay its decision on such motion pending receipt of such Report.

Plaintiff avers & submits that the evidence rules also provide for - appointed experts in prison cases. See Fed. R. Evid. 706(a), and several courts have appointed experts in prison cases. See Williams v. McArthur, 963 F.2d 707 (2d Cir. 1992); McInney v. Anderson, 924 F.2d 1500, 1510-11 (9th Cir. 1991); Crabtree v. Collins, 722 F.2d 91, 81 (6th Cir. 1996) and Balla v. Board of Corrections, 656 F.Supp. 1110 (D. Idaho 1987). See also Hodges v. Keane, 145 F.R.D. 332 (S.D. 1993) (requiring defendants who sought to have their psychiatrist examine plaintiff to pay for the indigent plaintiff to hire his own expert).

Plaintiff avers & submits that the relevant part of Fed. R. Evid. 706(a), State

"(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed. . . and may appoint any expert witnesses agreed upon by the parties."

Pursuant to the above-cited rule, plaintiff requests this court to appoint expert mental health witness in this cause or to issue an order requiring defendants, herein, to show cause why such an expert witness should be appointed by this court, herein this case, and he submits the name of Dr. Kupers, M.D., Co-Chair of the Committee on Persons with Mental Illness Behind Bars of the American Association of Community Psychiatrists and Author of the Book Madness: The Mental Health Crisis Behind Bars and What We Must Do About It (Jossey-Bass) as such Court-Appointed Expert.

Even if the Court declines to court-appoint Dr. Kupers or another Mental Health Expert in this case, under the holding of Hodges v. Keane cited above, this court should still order & require the Correctional Defendant to pay for this indigent plaintiff to hire Dr. Kupers as his own expert in this case & should stay all further proceedings in this case until Dr. Kupers or whatever Mental Health Expert can examine plaintiff & file his Report.

RESPECTFULLY SUBMITTING

(s)

Dated: 31st DECEMBER 2000:

John Richard Jale
MR. JOHN RICHARD JALE
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